



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

August 8, 2019

VIA EMAIL

Rafael A. Toro Ramírez  
TORO & ARSUAGA, LLC  
P.O. Box 11064  
San Juan, Puerto Rico 00922-1064

Re: EPA Response to July 31, 2019 Proposal for the PROTECO Site in Peñuelas, PR

Dear Mr. Toro Ramírez:

As you know, the U.S. Environmental Protection Agency ("EPA") has documented the release or threat of release of hazardous substances into the environment at the PROTECO Superfund Site ("Site"), located in Peñuelas, Puerto Rico. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675, and in response to these releases, EPA has spent public funds and anticipates spending additional public funds.

EPA has previously notified your client of its status as a potentially responsible party ("PRP") for the Site under CERCLA. By letter dated June 28, 2019, EPA notified your client and other special notice letter recipients that EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement among your client, the other special notice letter recipients, and EPA for performance of a remedial investigation and feasibility study ("RI/FS") at the Site. The June 28, 2019 letter enclosed a draft administrative order on consent ("Administrative Order"). A draft statement of work ("SOW") was subsequently sent to the special notice letter recipients by email on July 2, 2019.

On July 31, 2019, you submitted a proposal (the "July 31, 2019 Proposal"), which you characterized as a "good faith offer" in response to EPA's June 28, 2019 letter. EPA appreciates your client's willingness to engage in negotiations during the 60-day moratorium period initiated by EPA's June 28, 2019 letter. While EPA believes that certain activities contained in the July 31, 2019 Proposal are beneficial and worth pursuing, EPA has determined that the July 31, 2019 Proposal is insufficient to meet the requirements of a RI/FS as part of the remedy selection process set forth in Section 300.430 of the National Contingency Plan, 40 C.F.R. § 300.430, and that it does not constitute a "good faith offer" to conduct or finance the RI/FS at the Site.

In order for a proposal to constitute a “good faith offer” to conduct or finance the RI/FS, it must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance an RI/FS consistent with EPA’s SOW and Administrative Order;
2. A detailed response to EPA’s SOW and draft Administrative Order identifying all issues with them and proposed resolutions. This response should be in the form of a redlined version of the Administrative Order and SOW. Upon request, EPA will provide Word versions of these documents via email;
3. A detailed description of how the PRPs plan to proceed with the work;
4. A demonstration of the PRPs’ technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process that you will use to select the firm(s);
5. A demonstration of the capability of the PRPs to finance the RI/FS;
6. A statement of willingness by the PRPs to reimburse EPA for past costs and costs incurred in overseeing the PRPs’ conduct of the RI/FS; and
7. To the extent applicable, the name, address, email address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

Should your client or the other PRPs decide to submit another proposal in an effort to satisfy a “good faith offer,” that proposal should include the aforementioned elements as well as certain requirements that must be included in a PRP-conducted RI/FS according to EPA’s October 1988 guidance, entitled “Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA” (“RI/FS Guidance”) and EPA’s June 1989 guidance, entitled “Model Statement of Work for a Remedial Investigation and Feasibility Study Conducted by Potentially Responsible Parties” (“Model SOW”), which are enclosed with this letter. The RI/FS Guidance and Model SOW provide that the following tasks must be performed during a PRP-conducted RI/FS: scoping, community relations, site characterization, baseline risk assessment, treatability studies, development & screening of remedial alternatives, and detailed analysis of remedial alternatives. EPA also recommends that any proposed “good faith offer” include the elements contained in the draft SOW emailed to the parties on July 2, 2019.

Although EPA does not consider the July 31, 2019 Proposal to be a “good faith offer” to conduct or finance the RI/FS, EPA views it as a positive step to address some immediate concerns at the Site. Certain activities (including repairing fencing, conducting maintenance at the Site, assessing and repairing monitoring wells, collecting preliminary data, and designing and installing runoff control measures) can and should be started immediately. However, EPA believes that the performance of these initial activities should not delay efforts by EPA and the

special notice letter recipients to negotiate a settlement in the form of the Administrative Order to conduct or finance the RI/FS at the Site.

Furthermore, the July 31, 2019 Proposal requests EPA's authorization for disbursements of monies from a post-closure trust fund that was required pursuant to an amended consent decree in U.S. v. Proteco, et al., Civil No. 86-1698, entered on November 20, 1997. The amended consent decree limits use of post-closure trust fund monies to payment for post-closure activities. The post-closure trust fund was established for the benefit of EPA pursuant to a May 1998 Trust Agreement. EPA is still evaluating whether monies from the post-closure trust fund may be used, consistent with the amended consent decree, trust agreement, and applicable regulations, to fund the costs of certain activities contained in the July 31, 2019 Proposal.

If you have any questions regarding the technical aspects of this letter, please contact Ms. Luna at (787) 977-5844 or email her at [Luna.Zolymar@epa.gov](mailto:Luna.Zolymar@epa.gov). Please direct all inquiries regarding legal questions to me at (212) 637-3197 or at [Leshak.Andrea@epa.gov](mailto:Leshak.Andrea@epa.gov).

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Leshak', with a stylized flourish at the end.

Andrea Leshak  
Assistant Regional Counsel

Cc: Special Notice Letter Recipients (via email)

Enclosures

